

1 MICHAEL A. MAURER, WSBA #20230
2 CHARLES HAUSBERG, WSBA #50029
3 LUKINS & ANNIS, P.S.
4 1600 Washington Trust Financial Center
5 717 W Sprague Ave
6 Spokane, WA 99201-0466
7 Telephone: (509) 455-9555
8 Facsimile: (509) 747-2323
9 E-mail: mmaurer@lukins.com;
10 chausberg@lukins.com
11 Attorneys for Bryan and September Caldwell

12 UNITED STATES DISTRICT COURT FOR THE
13 EASTERN DISTRICT OF WASHINGTON

14 BRYAN CALDWELL, and
15 SEPTEMBER CALDWELL,
16 individually and as a married couple
17 Plaintiff,

18 v.

19 UNITED STATES OF AMERICA;
20 Defendant.

NO.
COMPLAINT
JURY DEMAND

21 Plaintiffs, by and through their counsel of record, Lukins & Annis, P.S.,
22 and for cause of action against Defendant, allege as follows. Plaintiffs demand a
23 trial by jury for all claims in this matter.
24
25

COMPLAINT: 1

LAW OFFICES OF
LUKINS & ANNIS, PS
A PROFESSIONAL SERVICE CORPORATION
717 W Sprague Ave., Suite 1600
Spokane, WA 99201
Telephone: (509) 455-9555
Fax: (509) 747-2323

I. PARTIES

1.1 Plaintiff Bryan Caldwell (“Mr. Caldwell”) is a married individual residing in Spokane County, Washington.

1.2 Plaintiff September Caldwell (“Mrs. Caldwell”) is a married individual residing in Spokane County, Washington.

1.3 Mr. and Mrs. Caldwell are a married couple. Mr. and Mrs. Caldwell will be referred to collectively herein as “Plaintiffs.”

1.4 Defendant United States of America (hereinafter “United States”) and its agents, servants, and employees were the owners, operators, maintainers, and controllers of the Mann-Grandstaff VA Medical Center (hereinafter “VA”) located at Spokane, Washington at all times herein mentioned.

1.5 If Defendant United States was a private person, it would be liable to Plaintiffs in accordance with the laws of the State of Washington.

II. JURISDICTION AND VENUE

2.1 Plaintiffs re-allege the preceding paragraphs as though fully set forth herein.

2.2 The Court has subject matter jurisdiction over this action. This is an action arising under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 1402(b),

COMPLAINT: 2

LAW OFFICES OF
LUKINS & ANNIS, PS
A PROFESSIONAL SERVICE CORPORATION
717 W Sprague Ave., Suite 1600
Spokane, WA 99201
Telephone: (509) 455-9555
Fax: (509) 747-2323

1 2401(b) and 2671-2680, et seq., which provide this Court with jurisdiction in this
2 matter.

3
4 2.3 Pursuant to the doctrine of pendent jurisdiction codified in 28 U.S.C.
5 § 1367, this Court has jurisdiction over claims that lack an independent basis of
6 jurisdiction, including over any and all pendent state statutory and common law
7 claims.
8

9 2.4 Venue is proper pursuant to 28 U.S.C. § 1402(b) and § 1391(b)
10 because the Plaintiffs reside in this district, and the acts and omissions
11 complained of occurred within this district, in Spokane, Washington.
12

13 2.5 Pursuant to the provisions of the Federal Tort Claims Act, Plaintiffs
14 presented an administrative claim for damages to the Department of Veterans
15 Affairs, U.S. Government, relating to the events and circumstances complained of
16 herein. This claim was timely presented and received by the Department of
17 Veterans Affairs no later than December 23, 2021. More than six (6) months
18 have passed since the claim was received and the Department of Veterans Affairs
19 has failed to make a disposition of the claim. Plaintiffs deem this failure to make
20 a disposition to be a final denial of the claim pursuant to 28 U.S.C. § 2675(a).
21 Plaintiffs have complied with all prerequisites to filing suit.
22
23
24
25

COMPLAINT: 3

LAW OFFICES OF
LUKINS & ANNIS, PS
A PROFESSIONAL SERVICE CORPORATION
717 W Sprague Ave., Suite 1600
Spokane, WA 99201
Telephone: (509) 455-9555
Fax: (509) 747-2323

III. FACTS

3.1 Plaintiffs re-allege the preceding paragraphs as though fully set forth herein.

3.2 Mr. Caldwell was an active-duty member of the United States Marine Corps until August 2015.

3.3 During and after his service, Mr. Caldwell received routine physicals and had medical appointments through the VA and at VA facilities. His physicals and checkups included blood work and laboratory diagnostics. Included in these checkups were Prostate Specific Antigen (PSA) tests. The purpose of PSA tests is to determine the level of antigenic enzymes released by the prostate. High levels of this enzyme may indicate current (or the future potential of) prostate cancer.

3.4 For example, Mr. Caldwell had a PSA test on November 29, 2011. This test revealed a value of 1.32, which is considered high for a 40-year-old man (the age of Mr. Caldwell at the time). This was a red flag that warranted further monitoring.

3.5 A follow-up PSA test occurred on January 30, 2012, which recorded a PSA value of 2.02.

COMPLAINT: 4

LAW OFFICES OF
LUKINS & ANNIS, PS
A PROFESSIONAL SERVICE CORPORATION
717 W Sprague Ave., Suite 1600
Spokane, WA 99201
Telephone: (509) 455-9555
Fax: (509) 747-2323

1 3.6 Another PSA test was conducted on September 19, 2012, which
2 recorded a value of 2.29.

3
4 3.7 The above test results showed Mr. Caldwell's PSA values steadily
5 rising from a level that was high to begin with. This steady rise and the velocity
6 of the increase warranted continued monitoring. However, continued monitoring
7 apparently did not occur.
8

9 3.8 Then, in February 2017, Mr. Caldwell was seen by Dr. Debra Baylor
10 and other healthcare providers at the Mann-Grandstaff Veterans Medical Center
11 in Spokane, Washington. At this appointment, Mr. Caldwell disclosed that his
12 biological father had been diagnosed with prostate cancer in 2013.
13

14 3.9 At this appointment in February 2017, Mr. Caldwell's PSA level was
15 recorded at 3.44—again a high value and significantly higher than his values in
16 2011 and 2012.
17

18 3.10 Given Mr. Caldwell's age in 2017 (45 years old), the previous PSA
19 testing results, his family history of prostate cancer, the concerning increase of
20 PSA velocity (which had almost tripled in 5 years, and the current PSA value of
21 3.44, the VA should have taken the necessary steps to have Mr. Caldwell's
22 prostate condition evaluated.
23
24
25

COMPLAINT: 5

LAW OFFICES OF
LUKINS & ANNIS, PS
A PROFESSIONAL SERVICE CORPORATION
717 W Sprague Ave., Suite 1600
Spokane, WA 99201
Telephone: (509) 455-9555
Fax: (509) 747-2323

1 3.11 Among other things, a reasonable primary care physician in this
2 situation should have referred Mr. Caldwell to a urologist for further testing and a
3 consultation. This testing and consultation would have included a biopsy, which
4 would have detected the presence of prostate cancer in an early, treatable stage.
5 This would have resulted in the detection and cure of Mr. Caldwell's prostate
6 cancer.
7
8

9 3.12 Tragically, despite the serious and obvious warning signs discussed
10 above, the VA and its healthcare providers did nothing with regard to Mr.
11 Caldwell's prostate condition. They did not implement any further monitoring.
12 They did not implement further testing of any kind. They did not even advise Mr.
13 Caldwell of the need to consider further evaluation or monitoring.
14
15

16 3.13 Because the VA did not appropriately advise, treat, and evaluate Mr.
17 Caldwell in 2017, his prostate cancer continued to grow unchecked.
18

19 3.14 More than four years after his February 2017 appointment, Mr.
20 Caldwell began experiencing significant abdominal pain in the Spring of 2021.
21 He went to a local hospital for urgent treatment. At this time, testing revealed
22 diffuse bone lesions with a highly-elevated PSA level. As a result of that testing,
23 Mr. Caldwell was transferred to the care of Spokane Urology, PC. Had the VA
24
25

COMPLAINT: 6

LAW OFFICES OF
LUKINS & ANNIS, PS
A PROFESSIONAL SERVICE CORPORATION
717 W Sprague Ave., Suite 1600
Spokane, WA 99201
Telephone: (509) 455-9555
Fax: (509) 747-2323

1 acted appropriately, including in 2017, this type of referral would have happened
2 in 2017.

3
4 3.15 Mr. Caldwell began seeing doctors at Spokane Urology in June of
5 2021, and a PSA test was conducted on June 9, 2021. This test showed a PSA
6 level of 1,621.0 ng/ML. A biopsy conducted the next day, on June 10, 2021,
7 showed, *inter alia*, prostatic adenocarcinoma. A subsequent nuclear bone scan
8 conducted on June 17, 2021 showed extensive metastatic cancer.

9
10 3.16 In other words, Mr. Caldwell was diagnosed with prostate cancer
11 that had metastasized and spread extensively through his body. He now has Stage
12 IV terminal cancer.

13
14 3.17 Mr. Caldwell's advanced metastatic cancer means that his lifespan
15 will be drastically reduced. In addition, for the remainder of his life, he will
16 require significant, difficult, and painful treatments. His daily life is
17 characterized by pain and difficulty with simple life tasks.

18
19 3.18 If the VA and its medical professionals had abided by the
20 appropriate standard of care, Mr. Caldwell's cancer would have been detected in
21 in 2017. At that point in time, the cancer was in its early stages and was not
22 advanced.
23
24
25

COMPLAINT: 7

LAW OFFICES OF
LUKINS & ANNIS, PS
A PROFESSIONAL SERVICE CORPORATION
717 W Sprague Ave., Suite 1600
Spokane, WA 99201
Telephone: (509) 455-9555
Fax: (509) 747-2323

1 3.19 At a bare minimum, the VA should have referred Mr. Caldwell to a
2 urologist as a result of the February 2017 appointment and test results. If that
3 referral had occurred, for example, the urologist would have conducted a biopsy
4 in 2017 that would have revealed the cancer when it was curable and treatable.
5 At that point, the cancer would have been detected, treated, and cured.
6

7 3.20 The VA's failure to treat Mr. Caldwell and failure to diagnose (or
8 take any steps to diagnose) his cancer was the direct and proximate cause of Mr.
9 Caldwell's terminal prostate cancer.
10

11 3.21 In sum, as a result of the VA's acts and omissions, Mr. Caldwell has
12 suffered extreme pain, suffering, emotional distress, and permanent injury that
13 will result in his premature and avoidable death. Mrs. Caldwell has already
14 suffered—and will continue to suffer—due to the loss of Mr. Caldwell's
15 companionship.
16
17

18 **IV. CAUSES OF ACTION**

19 **MEDICAL MALPRACTICE**

20 4.1 Plaintiffs re-allege the preceding paragraphs as though fully set forth
21 herein.
22
23
24
25

COMPLAINT: 8

LAW OFFICES OF
LUKINS & ANNIS, PS
A PROFESSIONAL SERVICE CORPORATION
717 W Sprague Ave., Suite 1600
Spokane, WA 99201
Telephone: (509) 455-9555
Fax: (509) 747-2323

1 4.2 The above-described facts indicate that the VA failed to exercise the
2 standard of care of a reasonably prudent health care provider acting in the same or
3 similar circumstances. As set forth above and among other things, the VA's
4 failure to take any actions as a result of Mr. Caldwell's February 2017
5 appointment and test results violated the applicable and accepted standard of care.
6 As set forth above, the VA should have taken actions that would have resulted in
7 the discovery of Mr. Caldwell's prostate cancer in 2017.
8

9
10 4.3 Had the VA complied with the appropriate standard of care, Mr.
11 Caldwell's prostate cancer would have been detected and cured in 2017.
12

13 4.4 The above-described facts indicate that the VA's failure to exercise
14 the appropriate and applicable standard of care directly and proximately caused
15 Mr. Caldwell's cancer to go undiagnosed and become terminal.
16

17 4.5 Therefore, as a direct and proximate cause of the VA's acts and
18 omissions described herein, Mr. Caldwell has suffered pain and suffering,
19 emotional distress, loss of enjoyment of life, a significant shortened lifespan, and
20 will suffer a premature death.
21

22 4.6 The United States is liable to Plaintiffs for the VA's acts and
23 omissions described herein in amounts to be determined at the time of trial.
24
25

COMPLAINT: 9

LAW OFFICES OF
LUKINS & ANNIS, PS
A PROFESSIONAL SERVICE CORPORATION
717 W Sprague Ave., Suite 1600
Spokane, WA 99201
Telephone: (509) 455-9555
Fax: (509) 747-2323

LOSS OF CONSORTIUM

4.7 Plaintiffs re-allege the preceding paragraphs as though fully set forth herein.

4.8 As a direct and proximate result of the VA's acts and omissions described herein, Mrs. Caldwell has suffered damages and been deprived of Mr. Caldwell's full society, affection, care, comfort, assistance, and companionship as a husband, and has otherwise suffered a loss of consortium in an amount to be determined at the time of trial.

4.9 The United States is liable to Plaintiffs for the VA's acts and omissions described herein in amounts to be determined at the trial of trial.

V. DEMAND FOR JURY

5.1 Plaintiffs demand a jury trial.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment as follows:

1. For a judgment in favor of Plaintiffs in amounts to be proven at trial, including but not limited to awards of damages for:

1.1 Past, present, and future medical expenses;

COMPLAINT: 10

LAW OFFICES OF
LUKINS & ANNIS, PS
A PROFESSIONAL SERVICE CORPORATION
717 W Sprague Ave., Suite 1600
Spokane, WA 99201
Telephone: (509) 455-9555
Fax: (509) 747-2323

1.2 Past, present, and future pain and suffering, mental anguish,
and emotional distress;

1.3 Past, present, and future loss of the ability to enjoy life;

1.4 Past, present, and future wage loss; and

1.5 Past, present, and future loss of love, care, affection and
companionship in the martial community.

2. For an award of pre-judgment and post-judgment interest as
permitted by law and in amounts to be proven at trial.

3. For an award of reasonable attorneys' fees and costs as permitted by
law, including under applicable statutes, regulations, court rules, case
law, and/or recognized grounds in equity.

4. For any other relief that may be just and permitted by law.

DATED this 27th day of June, 2022.

LUKINS & ANNIS, P.S.

By /s/Michael A. Maurer
MICHAEL A. MAURER
WSBA # 20230
CHARLES HAUSBERG
WSBA # 50029

Attorneys for Plaintiffs

COMPLAINT: 11

LAW OFFICES OF
LUKINS & ANNIS, PS
A PROFESSIONAL SERVICE CORPORATION
717 W Sprague Ave., Suite 1600
Spokane, WA 99201
Telephone: (509) 455-9555
Fax: (509) 747-2323